Supreme Court, U.S.
FILED

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No. 98-98 621 OCT 14 1998

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In The

Supreme Court of the United States

October Term, 1998

IN RE: MARTA A. LENTINO,

Petitioner.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

MARTA A. LENTINO
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52 pp

QUESTIONS STATED

Question 1.

Whether the Fifth Circuit's Court erred by cutting Petitioners' only avenue to undo manifest injustice of a District Court exercising control over a remanded state court case, enjoining a non-debtor state court defendant from exercising her legitimate legal rights to defend herself, refute the allegations of opposing party, counterclaim and otherwise participate in the state court litigation, penalizing such exercise with a jail sentence, which orders were issued after it had remanded the removed state court case back to the state court, conflicting with decisions rendered by other circuits, in that when case is remanded such order is not subject to challenge in the court of appeals by appeal, mandamus or otherwise, *Thermtron Products, Inc. v. Hermansdorfer,* 423 U.S. 336, 343, 96 S.Ct. 584, 589 (1976) and is a well settled principle of law that remand statute divests District Court of jurisdiction over a case once it mails a certified copy of the remand order to the clerk of the state court, conflicting with the decision rendered in *Trans Penn Wax Corp. v. McCandless,* 50 F.3d 217 (3rd Cir.1995), in *Browning v. Navarro,* 743 F.2d 1069 (5th Cir.1984), rehearing denied, 747 F.2d 1465, appeal after remand 826 F.2d 335 (5th Cir.1987), rehearing denied 830 F.2d 1126, rehearing denied *Navarro v. Holloway,* 830 F.2d 1126, appeal after remand 887 F.2d 553, (5th Cir.1989) rehearing denied 894 F.2d 99 (5th Cir.1990) and the decision rendered by this Honorable Court in *Quackenbush v. Allstate Ins. Co.,* 517 U.S. 706, 116 S.Ct. 1712 (1996).

QUESTIONS STATED – Continued

Question 2.

Whether the Fifth Circuit's court erred by leaving in place orders which inflict harm, are usurpative in nature and violate legitimate legal rights, which were issued by the District Court lacking jurisdiction for it had previously remanded the removed state court case back to the state court. Conflicting with 28 U.S.C. § 1447(c), 28 U.S.C. § 1447(d).

LIST OF PARTIES

Parties to the Case

1. Petitioner Marta A. Lentino, non Debtor.

2. Eduardo P. Lentino, Debtor

3. Jorge A. Lentino, Debtor

4. Lowell T. Cage, Chapter 7 Trustee of the Bankruptcy Estates of Eduardo P. Lentino, M.D., and Jorge A. Lentino, M.D.

Counsel in the Case

5. Mrs. Marta A. Lentino, Pro-Se, 99 N. Post Oak Lane # 1207, Houston, Texas 77024, representing herself.

6. Mrs. Theresa Mobley, Cage, Hill & Niehaus L.L.P. 5851 San Felipe, Suite # 950, Houston, Texas 77057, Attorney for Chapter 7 Trustee Lowell T. Cage.

7. Mr. Scott Rothenberg, Law Offices of Scott Rothenberg, 4710 Bellaire Blvd., Suite # 160, Bellaire, Texas 77401, special counsel for Chapter 7 Trustee Lowell T. Cage.

Other Interested Parties

7. Mr. Richard T. Howell, Jr., Buckley, Mathews, White, Howell & Janik L.L.P., 2401 Fountainview, Suite 1000, Houston, Texas 77057, Attorney for Cullen Center Bank and Trust, n/k/a Frost National Bank.

LIST OF PARTIES – Continued

8. The Honorable Morley H. White, 26600 George Zeiger Suite # 909, Beechwood, Ohio 44122, Special Counsel for Chapter 7 Trustee, Lowell T. Cage.

9. Gary S. Tradd, 4731 Ingersoll, Houston, Texas 77027, Special Counsel for Chapter 7 Trustee, Lowell T. Cage.

10. Neal D. Cannon, Martin and Cannon P.C., 6363 Woodway Suite 902, Houston, Texas 77056, Special Counsel for Chapter 7 Trustee, Lowell T. Cage.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Marta A. Lentino, respectfully requests that the Court grant the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

ORDERS BELOW

Petitioners' Appendices provide the pertinent Orders.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1254.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Petitioners' Appendices provide the pertinent Section of the United States Code.

STATEMENT OF THE CASE

The United States Court of Appeals for the Fifth Circuit entered its order denying Petitioners' Petition for Writ of Mandamus on June 29, 1998. Petitioner filed a Petition for Rehearing and a Suggestion for Rehearing En Banc, which the Fifth Circuit denied on August 10, 1998.

Petitioner is the non debtor wife of Eduardo P. Lentino, M.D. a general surgeon, and is a co-defendant in

state court case No. 91-18878 styled *Cullen Center Bank and Trust v. Eduardo P. Lentino et al.*, which was filed on May 3, 1991, and is currently pending, after its reversal, in the 281st Judicial District Court of Harris County, Texas. Petitioner attended Law School overseas, although not yet licensed to practice in the State of Texas.

On October 26, 1993 Cullen bank obtained a judgment, said usurious and fraudulent judgment was later reversed by the Court of Appeals for the 14th District, Houston, Texas, and Writ of Error was denied by the Supreme Court of Texas. *Lentino v. Cullen Center Bank and Trust*, 919 S.W.2d 743 (Tex. App. – Houston [14th Dist.] 1996, writ denied).

On August 24, 1994 Eduardo P. Lentino, M.D. and his brother Jorge A. Lentino, M.D. filed for Chapter 7 bankruptcy following the entrance of said erroneous judgment and the seizure of all of their business and termination of their employment contracts.

On August 30, 1994 Debtor Eduardo P. Lentino, M.D., a state court defendant, removed the state court Case No. 91-18878 to the U.S. District Court, the Honorable Judge Lynn N. Hughes presiding. On September 27, 1994 Cullen Bank, n/k/a Frost National Bank filed a motion for remand and abstention stating that the case should be remanded mandatorily to state court or in the alternate that the Federal Court should abstain and remand, relying therein on 28 U.S.C. § 1334, also stating in its motion that courts must abstain under 28 U.S.C. § 1334(c)(2) relying therein on *State Bank of Lombard v. Charthouse, Inc.*, 46 B.R. 468, 470-71 (N.D. Ill. 1985), or alternatively that

the District Court exercise its discretionary power to abstain in the interest of justice, or in the interest of comity with state courts or respect for State law, relying on 1334(c)(1). Further Cullen Bank informed the District Court that there were non-debtors parties involved in the state court proceeding.

On January 25, 1995 the District Court granted Cullen bank's motion and abstention was entered, said order was mailed to the state court by certified mail on January 25, 1995. The Chapter 7 Trustee of the bankruptcy estates of Debtors Lentino did not intervene and/or appeal said order to remand the removed state court case to the state court.

Well over two and a half years after the state court case had been remanded the District Court entered a series of orders at the instance and request of the joint bankruptcy case Trustee Lowell T. Cage, which orders totally precluded this Petitioner from defending herself in said state court litigation. Petitioner was ordered to withdraw her pleadings in the state court case where she is still a defendant, was orally instructed "not to file anything" under threat of being sent either to the Harris County jail or the Montgomery County jail if she tries to represent and defend herself in said litigation. Petitioner already was incarcerated for several hours in the Federal Court building jail for filing pleadings in the state court litigation to defend and protect her interest. Petitioners' interests are not represented by anyone and has otherwise not retained counsel, and has dismissed her previous trial attorney.

On May 13, 1998 the District Court lifted the automatic Stay allowing the litigation to go forward, but keeping in place the injunctive orders issued against this Petitioner, which orders precluded Petitioner from filing any pleadings in her own defense in said remanded case where she is still a defendant.

The District Court made improper biased and derogatory remarks regarding this Petitioner and her family and improperly imported into the trial court its personal view about the Hispanic people by stating that "One of the real tragedies of American Life is the exploitation of physicians. They are just put upon by everybody. You know, illiterate Hispanic housewives and physicians, who own hospitals and live in houses of more than a million dollars of value, those are the tragic people in our society" and further stating "I just don't know how these people can stand to live with themselves". To the extent that a judge has become biased due to opinions formed during the judicial proceeding, disqualification is required if the Judge displays a high degree of favoritism or antagonism that would make a fair judgment impossible. *Litkey v. U.S.*, 510 U.S. at 554, *U.S. v. Jordan*, 49 F.3d at 155.

The Fifth Circuit did not enter its opinion stating its rationale for denying Petitioners' Writ of Mandamus. Petitioner ask the Court to exercise its certiorari jurisdiction and resolve these issues and settle an important question of Federal law – the extent to which a U.S. District Court can continue to exercise control and jurisdiction over a non Debtor state court defendant in a remanded state court case over two and a half years after it had remanded the removed state court case to the state

court and after it had lifted the automatic stay allowing the litigation to go forward.

REASONS FOR GRANTING THE WRIT

A. This is an important case in which to grant the writ in order to maintain uniformity of well-established principle of law that remand statute divests District Court of jurisdiction over case, as soon as remand order is entered, once it mails a certified copy of the remand order to the clerk of the state court.

Because the Fifth Circuit Court allowed the District Court to keep in place injunctive orders towards this Petitioner, issued over two and a half years after it had remanded the removed state court case to the state court, which orders penalize the lawful exercise of legitimate legal rights to defend oneself against the opposing party allegations and otherwise participate in the litigation like any other defendant that has been afforded equal protection of the laws guaranteed by the Fourteenth Amendment of the U.S. Constitution, to a jail sentence, and subjects this Petitioner to an imposed default leaving the floor open for Cullen Center Bank and Trust, n/k/a Frost National Bank, to proceed unhampered towards a devastating judgment against this Petitioner, in essence, inflicting a sanction without any hearing or adjudication thereon. It is appropriate for this honorable Court to maintain in place the decisions rendered by other circuits including the Fifth Circuit.

As a matter of federal statute, remand is effected when the Federal Court clerk sends a certified copy of the

order of remand to the clerk of the state court, and it may proceed with the case, 28 U.S.C. § 1447(c).

Remand statute divests District Court of jurisdiction over case as soon as remand order is entered and from that point on it cannot reconsider its ruling even if district court clerk fails to mail certified copy of remand order to state court. *In re Lowe*, 102 F.3d 731 (4th Cir.1996). Further in *Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217 (3rd Cir.1995) the Third Circuit stated that physical mailing of certified copy of remand order to state court is key event to divest District Court of jurisdiction, which concurs with this Circuits' opinion in *Browning v. Navarro*, 743 F.2d 1069 (5th Cir.1984), rehearing denied, 747 F.2d 1465, appeal after remand 826 F. 2d 335 (5th Cir. 1987), rehearing denied, *Navarro v. Holloway*, 830 F.2d 1126, appeal after remand 887 F.2d 553 (5th Cir.1989) rehearing denied 894 F.2d 99 (5th Cir.1990).

Furthermore, reconsideration will be impermissible for order remanding case to state court based on lack of diversity jurisdiction, remand order completely divested court of subject matter jurisdiction, *Thompson v. Radosta*, 906 F.Supp. 367 (E.D.La.1995).

Further when District Court remands case which has been removed to state court, district court disassociates itself from case entirely, retaining nothing of the matter on federal court's docket *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 116 S.Ct. 1712 (1996).

Court of Appeals lacks jurisdiction to review district court's remand order which was based on lack of jurisdiction over state breach of contract claim, where state action was removed from state court pursuant to statute

governing removal of claims relating to bankruptcy cases, and district court ordered the case remanded to state court on mandatory abstention grounds. *In re Conejo Enterprises, Inc.* 96 F.3d 346 (9th Cir.1996). Further, the Court of Appeals lacked jurisdiction over appeal from district court order remanding eminent domain proceedings, regardless whether decision to remand was based on legal or equitable determination. *In re Cathedral of Incarnation in Diocese of Long Island,* 90 F.3d 28, (2nd Cir.1996), rehearing denied, 99 F.3d 66 (2nd Cir.1996).

The mere fact that bankruptcy court may have erred in concluding that there was equitable ground to remand removed proceeding did not permit review of remand order, pursuant to statute providing for remand on any equitable ground and providing that decision to remand would not be reviewable, where court's stated ground for remand was equitable one. *Matter of U.S. Brass Corp.,* 110 F.3d 1261 (7th Cir.1997).

Federal judges can remand with impunity if they don't state their reasons: "if a trial judge purports to remand a case on the ground that it was removed improvidently and without jurisdiction, his order is not subject to challenge in the courts of appeal by appeal, by mandamus, or otherwise *Thermtron Products, Inc. v. Hermansdorfer,* 423 U.S. 336, 343, 96 S.Ct. 584, 589 (1976), (emphasis added). There is usually no right of appeal from an order remanding a removed action, because the remand order is not a final judgment on the merits, *Thermtron,* supra, at 352-353, 96 S.Ct. 594. Further, after certification to state court, federal court can not vacate remand order and once it has certified the remand order

to state court it is divested of jurisdiction and can take no further action on case. *Seedman v. U.S. Dist. Court For Cent. D. of Cal.*, 837 F.2d 413 (9th Cir.1988).

When a District Court exercises its power to remand under 28 U.S.C. § 1447(c), § 1447(d) its order is non-reviewable. *Liberty Mut. Ins. Co. v. Ward Trucking Corp.*, 48 F.3d 742, 750 (3rd Cir.1995). The panel decision is erroneous for it allows to remain in place orders which inflict irreparable harm, which were issued by the District Court after it had relinquished jurisdiction to the state district court, it also allows the crushing of fundamental legitimate legal rights and legitimizes an erroneous abusive preclusion and sanction imposing a sure destiny of default and damages and subjects Petitioner to incur in multiple litigation to defend and protect Petitioners' rights, defenses and counterclaims. Petitioner respectfully requests that this Court grant the Writ and reverses the Fifth Circuit's denial of granting mandamus and dissolve the injunctive orders issued against this Petitioner, non Debtor state court defendant, which were issued lacking jurisdiction and/or exceeding its prescribed jurisdiction.

B. This is an appropriate case in which to grant the writ because it involves an important question of Federal Law – the extent to which a U.S. District Court can continue to exercise control and jurisdiction over a non Debtor state court defendant in a remanded state court case over two and a half years after it had remanded the removed state court case to the state court and after it had lifted the automatic stay allowing the litigation to go forward.

The Panel did not state in its orders its rationale when it denied Petitioners' petition for rehearing and

suggestion for rehearing en banc. This honorable Court has stated that judgment entered by a court lacking jurisdiction is void (per Justice Scalia with three Justices concurring and five Justices concurring in the judgment) *Burnham v. Superior Court of California,* 110 S.Ct. 2105 (1990), *supra,* [n.1] at 2106. Therefore, orders entered lacking jurisdiction are also void.

CONCLUSION

The Fifth Circuits' denial of Petitioner's Petition for Writ of Mandamus given the extraordinary circumstances in this case injects uncertainty into an area of the law in which certainty and stability are critical regarding jurisdictional issues and because it leaves in place injunctive orders which inflict irreparable harm, allows the crushing of fundamental legitimate legal rights and condones the manifest injustice by precluding this non-Debtor state court defendant from defending herself and participate in the litigation in which she is a named defendant. This can not be condoned in our judicial system. The exercise of legitimate legal rights can not be negated, conditioned or penalized with a jail sentence. For these reasons Petitioner asks the Court to grant writ of certiorari and reverse the denial of the Fifth Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX 1

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20491

In Re: MARTA A LENTINO
Petitioner

Appeal from the United States District Court for the Southern District of Texas, Houston

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(Filed Aug. 10, 1998)

ON MOTION FOR RECONSIDERATION AND SUGGESTION FOR REHEARING EN BANC

Before JOLLY, HIGGINBOTHAM, and DeMOSS, Circuit Judges.

PER CURIAM:

(✓) The Motion for Reconsideration is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5TH CIR. R. 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) The Motion for Reconsideration is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor.

(FED. R. APP. P. and 5TH CIR. R. 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ P. Higginbotham
United States Circuit Judge

REHG-4

APPENDIX 2

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20491

In Re: MARTA A LENTINO
Petitioner

Appeal from the United States District Court for the Southern District of Texas, Houston

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(Filed Jun. 29, 1998)

Before JOLLY, HIGGINBOTHAM, and DeMOSS, Circuit Judges.

BY THE COURT:

IT IS ORDERED that petitioner's writ of mandamus is denied.

APPENDIX 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

CULLEN CENTER BANK & TRUST, Plaintiff,	§	
versus	§	CIVIL ACTION
EDUARDO P. LENTINO, *et al.*, Defendants.	§	H-94-3007

ORDER TO REMAND

The removal having been an abusive misuse of the bankruptcy system, this case is remanded to the 269th Judicial District Court of Texas, Harris County (#4).

Signed January 25, 1995, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

TRUE COPY I CERTIFY
ATTEST: 7-2-98
MICHAEL N. MILBY, Clerk
By /s/ L. Babbitt
Deputy Clerk

APPENDIX 4

91-18878

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

CULLEN CENTER BANK & TRUST, Plaintiff,	§	
versus	§	CIVIL ACTION
EDUARDO P. LENTINO, *et al.*,	§	H-94-3007
Defendants.	§	

ORDER TO REMAND

(Filed Feb. 3, 1995)

The removal having been an abusive misuse of the bankruptcy system, this case is remanded to the 269th Judicial District Court of Texas, Harris County (#4).

Signed January 25, 1995, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

[Envelope]
[Post Office Stamp – Feb. 2, 1995]

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STATE OF TEXAS
COUNTY OF HARRIS

I, Charles Bacarisse, District Clerk of Harris County, Texas, do hereby certify that the foregoing data is a true and correct copy of the original record, now in my lawful orderly and possession as appears of record in my office.

a) filed on 2/3/95

b) recorded under Vol. ___ Judge ___ in the minutes of said court

c) abstracted from the file record in my lawful possession electronically stored in digital form and

pertaining to the ___ in reference to cause number ___, or

d) abstracted from the original record in my lawful possession electronically stored in digital form pertaining to ___ from ___ to the present date.

Witness my office hand and seal of office this SEP 03 1998

CHARLES BACARISSE,
DISTRICT CLERK
Harris County, Texas

By /s/ _____ Deputy

O. FLORES

APPENDIX 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

IN RE JORGE A. LENTINO,	§	
EDUARDO P. LENTINO,	§	
MARTA LENTINO,	§	CIVIL ACTION
	§	H-97-498
Debtors.	§	
	§	

Order

1. The automatic stay is lifted for Cullen Center to sue on the debt.

2. The counter-claim in usury is by the estate; no automatic stay existed.

Signed at Houston, Texas, on May 12, 1998.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

APPENDIX 6

FEBRUARY 29, 1996

[LOGO]
JUDGMENT

The Fourteenth Court of Appeals

MARTA A. LENTINO, EDUARDO P. LENTINO, AND JORGE A. LENTINO, APPELLANTS

NO. 14-94-00175-CV

V.

CULLEN CENTER BANK AND TRUST, APPELLEE

This cause, an appeal from the partial summary judgment and jury verdict in favor of appellee, Cullen Center Bank and Trust signed October 26, 1993, came on to be heard on the transcript of the record. We have inspected the record and find error in the judgment. We therefore order the judgment of the court below REVERSED and REMAND the cause for proceedings in accordance with the court's opinion.

We order appellee, Cullen Center Bank and Trust, jointly and severally, to pay all costs incurred because of this appeal.

We order this decision certified below for observance.

Reversed and Remanded; opinion filed February 29, 1996.

[LOGO]

In The
Fourteenth Court of Appeals

NO. 14-94-00175-CV

MARTA A. LENTINO, EDUARDO P. LENTINO, AND JORGE A. LENTINO,

Appellants

V.

CULLEN CENTER BANK AND TRUST, Appellee

On Appeal from the 269th District Court
Harris County, Texas
Trial Court Cause No. 91-18878

OPINION

Appellants, Marta A. Lentino, Eduardo P. Lentino, M.D., and Jorge A. Lentino, M.D., appeal from a partial summary judgment and jury verdict in favor of appellee, Cullen Center Bank and Trust. Appellants bring six points of error, contending: (1) the trial court improperly granted appellee's motion for partial summary judgment; and (2) the trial court erred by overruling appellants' motion to modify, correct, or reform the judgment when there was insufficient evidence or no evidence to support the jury's verdict. Appellants also request that in the event this case is reversed and remanded, this Court reverse the awards of prejudgment and postjudgment

interest, attorney's fees, costs of court, and several post-judgment orders by the trial court relating to the seizure of appellants' property. We reverse and remand for a trial on the merits.

In November 1982, Eduardo and Jorge Lentino individually executed separate promissory notes for $150,000 to appellee in order to finance their bank stock purchases. Both notes were renewed in November 1983. On December 14, 1984, Eduardo and Jorge Lentino and four other parties, jointly and severally, executed a new promissory note to appellee in the original amount of $2,252,250. Also on that day, Eduardo and Jorge Lentino executed guarantee agreements in favor of Cullen that unconditionally guaranteed payment of the $2,252,250 note. Appellee advanced no additional funds to appellants as consideration for increasing their obligation.

In February 1986, appellee filed individual suits against Jorge and Eduardo Lentino for default on the December 1984 note, which matured on November 30, 1985. In March 1987, both Eduardo and Jorge Lentino entered into separate compromise settlement agreements with appellee. According to the terms of these agreements, Eduardo and Jorge agreed to execute new promissory notes to pay appellee $148,842 and $171,186.29, respectively. The compromise settlement agreements further provided that: (1) appellee would pay Eduardo and Jorge each $10 and release them of their joint and several liability under the 1984 note and guaranty agreements; (2) if Eduardo or Jorge defaulted on their notes, the defaulting party could be liable for the outstanding balance on the original 1984 note; and (3) Eduardo and Jorge waived

all affirmative defenses and causes of action relating to the loan documents in the underlying lawsuit.

Both Eduardo and Jorge subsequently defaulted on their 1987 notes, and in 1990, appellee filed separate lawsuits to collect on these notes. The trial court entered final judgments in favor of appellee and awarded actual damages, prejudgment interest, attorneys fees, costs of court, and postjudgment interest. During postjudgment discovery, however, appellee allegedly discovered fraudulent transfers by Jorge, Eduardo and Marta Lentino made during the time the compromise settlement agreements were executed. Appellee subsequently filed this suit, claiming fraud, fraudulent transfers, breach of contract, conspiracy, negligence, and negligent misrepresentation. The appellants responded with a general denial and asserted several affirmative defenses, including usury. The appellants also filed counterclaims alleging usury, slander of title, unreasonable collection efforts, and intentional infliction of emotional distress.

In June 1993, Cullen filed a motion for partial summary judgment, requesting the trial court to hold that the compromise settlement agreements barred appellants' "affirmative causes of action" which relate to the underlying loan documents. Following the appellants' response, appellee filed its reply, clarifying that the compromise settlement agreement barred all of the Lentinos' claims *and* affirmative defenses. *See Stiles v. Resolution Trust Corp.*, 867 S.W.2d 24, 26 (Tex.1993) (indicating that specific grounds for summary judgment may be stated in movant's reply in order to comply with rule of civil procedure 166a(c)). The trial court subsequently granted appellee's motion and held the compromise settlement

agreements barred all of appellants' causes of action and affirmative defenses.

The parties proceeded to trial and at the close of evidence, the trial court directed a verdict in favor of appellee as to its claims for breach of the compromise settlement agreements. The trial court also rendered judgment on the jury's verdict, which addressed other issues, and awarded $1,817,525.42 in actual damages and $2,500,000 in exemplary damages against each Jorge and Eduardo Lentino, along with attorneys' fees, prejudgment interest, postjudgment interest and costs of court.

In their first point of error, appellants contend the trial court improperly granted appellee's motion for partial summary judgment, in part, because a fact issue exists as to whether the 1984 note was usurious. Appellants argue that if the 1984 note was usurious, the compromise settlement agreements were void because they failed to purge the usury contained in the 1984 note. *See Commerce Trust Co. v. Ramp*, 138 S W.2d 531, 534 (Tex.1940), *overruled on other grounds*, 561 S.W.2d 777 (Tex.1977); *see also* TEX. REV. CIV. STAT. ANN. art. 5069-1.02 (Vernon 1987) (stating that all usurious contracts are contrary to public policy); *Ferguson v. Tanner Development Co.*, 541 S.W.2d 483, 493 (Tex. Civ. App. – Houston [1st Dist.] 1976), *rev'd on other grounds*, 561 S.W.2d 777 (Tex.1977) (stating that contracts which are contrary to public policy are void). Accordingly, appellants maintain that no summary judgment could be based on a void instrument.

The movant for summary judgment has the burden to show that no genuine issues of material fact exist and that it is entitled to judgment as a matter of law. *Nixon v. Mr.*

Property Management Co., 690 S.W.2d 546, 548-49 (Tex.1985). In deciding whether there is a disputed material fact issue precluding summary judgment, proof favorable to the non-movant must be taken as true. *Id.*; *O'Bryant v. Century 21 S. Cent. States*, 899 S.W.2d 270, 271 (Tex.App. – Houston [14th Dist.] 1995, no writ). Further, we indulge every reasonable inference in favor of the non-movant and resolve any doubts in his favor. *O'Bryant*, 899 S.W.2d at 271; *Edwards v. Garcia-Gregory*, 866 S.W.2d 780, 783 (Tex.App. – Houston [14th Dist.] 1993, writ denied). If the movant's motion and summary judgment proof facially establishes his right to judgment as a matter of law, then the burden shifts to the non-movant to raise fact issues precluding summary judgment. *See City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex.1979). Moreover, if the non-movant relies on an affirmative defense to defeat summary judgment, he must present summary judgment proof sufficient to raise a fact issue as to each element of that defense. *Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex.1984); *see also Wilson v. General Motors Acceptance Corp.*, 897 S.W.2d 818, 823 (Tex.App. – Houston [1st Dist.] 1994, no writ).

The essential elements of a usurious transaction are: (1) a loan of money; (2) an absolute obligation to repay the principal; and (3) the exaction of a greater compensation than allowed by law for the use of the money by the borrower. *First Bank v. Tony's Tortilla Factory*, 877 S.W.2d 285, 287 (Tex.1994); *Holley v. Watts*, 629 S.W.2d 694, 696 (Tex.1982); *Blasdell v. Catalina*, 858 S.W.2d 653, 655 (Tex.App. – Houston [14th Dist.] 1993), *rev'd on other grounds*, 881 S.W.2d 295 (Tex.1994). In the present case, neither side disputes that appellee loaned Eduardo and

Jorge Lentino only $150,000 each, with obligations to repay the entire amounts. Appellee, however, contends that appellants failed to present sufficient summary judgment proof demonstrating usurious interest.

In support of its argument, appellee relies heavily on *Sorrells v. Gilberson*, 780 S.W.2d 936, 938 (Tex.App. – Austin 1989, writ denied), which stands for the proposition that a possessor of a promissory note who *moves* for summary judgment against the maker of the note must present certain proof to establish he is entitled to judgment as a matter of law. Specifically, the possessor of a note must either: (1) include the note in the summary judgment proof; or (2) establish the terms of the note by affidavit or other proper summary judgment proof. *Id.* Appellee now contends that appellants' proof was insufficient to support their usury defense because: (1) the 1982 and 1983 notes were absent from the summary judgment record; and (2) appellants' affidavits failed to state the relevant terms of the 1982 and 1983 notes. *See id.*

Upon review of the record, however, we find *Sorrells* to be inapposite. In the present case, appellants were the *non-movants*, and thus, their only burden was to demonstrate a fact issue as to each element of their usury defense. *See Brownlee*, 665 S.W.2d at 112. Unlike the *movant* for summary judgment in *Sorrells*, appellants were not required to establish conclusively each element of their defense. Accordingly, appellants were not required to show the terms of the notes, such as payment schedule, maturity date, interest rate, default provisions, acceleration terms, and notice, demand and presentment requirements to preclude partial summary judgment. As we

discuss below, the proof presented by appellants sufficiently established a fact issue as to the existence of usurious interest. That should have precluded partial summary judgment.

When a lender requires, as a condition to making a loan, that a borrower assume a third party's debt, such debt must be included in the interest computation to determine usury. *Alamo Lumber Co. v. Gold*, 661 S.W.2d 926, 928 (Tex.1983). In this case, the summary judgment record shows that as a condition to renew appellants' 1983 notes, appellee required them to sign the 1984 note, making them jointly and severally liable with third parties for $2,252,250. The record also shows that: (1) the 1984 note had a one-year maturity; and (2) appellee did not advance additional funds to appellants other than the original $150,000 loan made in 1982. Thus, although the interest rates on the 1982 and 1983 notes are not in the record, appellants' computed interest on the 1984 note under *Alamo Lumber* would likely exceed two million dollars for one year, even though appellants never received more than $150,000 from appellee.

Further, the maximum lawful rate of interest for a contract is 24% per annum. TEX. REV. CIV. STAT. ANN. art. 5069-1.04(a), (b)(1) (Vernon 1987). Interest rates exceeding the maximum lawful rate are deemed to be usurious. *See* TEX. REV. CIV. STAT. ANN. art. 5069-1.02 (Vernon 1987). Therefore, we find that there is, at least, a fact issue as to whether the 1984 note obligated appellants to pay interest

exceeding the maximum lawful rate.[1] *See also Catalina v. Blasdel*, 881 S.W.2d 295, 296 (Tex.1994) (stating that usury is a question of fact when not evident from the face of the instrument); *Dryden v. City Nat'l Bank of Laredo*, 666 S.W.2d 213, 216 (Tex.App. – San Antonio 1984, writ ref'd n.r.e.) (stating that usury, where not apparent from the face of the instrument, is a question of fact for the jury). Appellee, nonetheless, argues that even if a fact issue exists, partial summary judgment was proper because the 1987 compromise settlement agreements released any claims or defenses that the appellants may have had for usury under the 1984 note. We disagree.

A claim or defense of usury may be compromised and released if done in good faith and if the settlement instrument is purged of the usury contained in the underlying note. *See Finn v. Alexander*, 163 S.W.2d 714, 716 (Tex. 1942); *Ramp*, 138 S.W.2d at 534. For this to occur, there must be: (1) cancellation of the obligation tainted by the usury; and (2) the creation of a new obligation free of

---

[1] If we apply the maximum lawful interest rate for contracts, compounded annually for two years, and assume that Eduardo and Jorge Lentino failed to make any payments on their 1982 notes, our calculations show that each would owe appellee $222,000 at the time they signed the 1984 note for $2,250,000. Because the 1984 note had a one year maturity, under *Alamo Lumber*, the Lentinos' computed interest charge would have been approximately $2,028,000 each for one year. This amount, notwithstanding the interest owed by the Lentinos on the 1984 note itself, clearly exceeds the maximum lawful rate for contracts, and therefore, would be usurious. Although these calculations incorporate certain assumptions, they, nonetheless, illustrate the existence of a fact issue as to appellant's usury defense.

usury. *See Southwestern Inv. Co. v. Hockley County S. & D., Inc.*, 516 S.W.2d 136, 137 (Tex.1974); *Ramp*, 138 S.W.2d at 534; *O'Quinn v. Beanland*, 540 S.W.2d 526, 527 (Tex.Civ. App. – San Antonio 1976, no writ). On the other hand, when the original usurious obligation transcends into the subsequent agreement, such agreement is void and unenforceable. *See Ramp*, 138 S.W.2d at 535.

Under the terms of the compromise settlement agreement, both Jorge and Eduardo Lentino agreed to execute new promissory notes payable to appellee. In return, appellee paid Jorge and Eduardo $10 each and agreed to release them from their joint and several liability under the 1984 note and guaranty agreements. The agreement also provided, however, that if either Jorge or Eduardo defaulted on their notes, the defaulting party, at appellee's sole option, could be liable for the entire outstanding balance on the 1984 note. Because we find that a fact issue exists as to whether the 1984 note was usurious, we are unable to determine whether the compromise settlement agreement carried forward the usury contained in the 1984 note, and thus, was void and unenforceable. Accordingly, appellants' first point of error is sustained.

In points two through five, appellants attack the legal and factual sufficiency of the evidence as it relates to their alleged breaches of the compromise settlement agreements. However, given our disposition of appellants' first point, we need not address the merits of these issues.

In their sixth point of error, appellants request that, in the event this case is reversed and remanded, this

Court reverse the awards of prejudgment and postjudgment interest, attorney's fees, costs of court, and several post judgment orders by the trial court relating to the seizure of appellants' property. We decline their request and reverse and remand this case for a trial on the merits.

/s/ Paul C. Murphy
Chief Justice

Judgment rendered and Opinion filed February 29, 1996.

Panel consists of Chief Justice Murphy, and Justices Anderson and Fowler.

Publish – TEX. R. APP. P. 90.

APPENDIX 7

[SEAL] THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711 (512) 463-1312

February 21, 1997

Mr. Warren W. Harris
Bracewell & Patterson
711 Louisiana, Suite 2900
Houston, TX 77002-2781

Ms. Amy Marlyse Wilson
Porter & Hedges
700 Louisiana, 35th Floor
Houston, TX 77002-2764

Mr. Richard T. Howell, Jr.
Moore & Howell
520 Post Oak Blvd.,
Suite 600
Houston, TX 77027

Mr. Scott Rothenberg
Rothenberg & Gunn
4710 Bellaire Blvd., Suite 160
Bellaire, TX 77401-4505

RE: Case Number 96-0487
Style: CULLEN CENTER BANK & TRUST

v.

LOWELL T. CAGE, CHAPTER 7 TRUSTEE OF THE BANKRUPTCY ESTATES OF EDUARDO P. LENTINO, M.D., and JORGE A. LENTINO, M.D., DEBTORS, and MARTA LENTINO

Dear Counsel:

Today, the Supreme Court of Texas overruled both motions for rehearing of the application for writ of error in the above styled case. (Chief Justice Phillips not sitting.)

Sincerely,

John T. Adams, Clerk

by /s/ Michael C. Murphey
Michael C. Murphey, Deputy

APPENDIX 8

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARTA LENTINO, ET AL)	CA NO. H-97-499
VS.)	HOUSTON, TEXAS
JL YORK PLAZA LIVING)	NOVEMBER 21, 1997
TRUST, ET AL)	11:00 A.M.
)	(Filed Jan. 26, 1998)

TRANSCRIPT OF SANCTIONS HEARING
BEFORE THE HONORABLE LYNN N. HUGHES

APPEARANCES:

FOR THE PLAINTIFF:
MS. MARTA LENTINO
PRO SE
709 KUHLMAN
HOUSTON, TEXAS

FOR THE DEFENDANT:
MS. TERESA D. MOBLEY
CAGE, HILL & NIEHAUS
5851 SAN FELIPE, STE. 950
HOUSTON, TEXAS 77057

COURT REPORTER:
HERMAN CHESTER
515 RUSK, #8026
HOUSTON, TEXAS 77002
(713) 250-5580

PROCEEDINGS RECORDED BY MECHANICAL
STENOGRAPHY, TRANSCRIPT PRODUCED BY
COMPUTER-AIDED TRANSCRIPTION

HERMAN CHESTER – (713) 250-5580

* * *

[p. 42] DEFENDING YOUR HONOR, BECAUSE IF YOUR HONOR SEES WHAT I'M FILING, THE JUDICIAL NOTICE IS NOT AN ATTEMPT TO GAIN CONTROL OF THE CASE OR ANYTHING, IT WASN'T ANYTHING LIKE THAT AT ALL, YOUR HONOR, IT WAS JUST TELLING THE JUDGE; PLEASE DEAR DISTRICT STRICT COURT JUDGE, KNOW THAT THE STAY HAS NOT BEEN LIFTED REGARDING THE UNITED STATES COURT REGARDING THE ORDER OF JULY 2ND ENTERED BY THE YOUR HONOR JUDGE WHELESS – JUDGE HUGHES. THEN I ATTACHED THE DOCKET TO SHOW THAT MY APPEAL WAS ALREADY DOCKETED IN THAT LOUISIANA. AND I AM GETTING READY TO DO THE BRIEF, YOUR HONOR, IN THE NEXT FEW WEEKS ON THAT CASE.

THE COURT: GOOD.

MS. LENTINO: SO WE SHOULD HAVE AN ANSWER FROM THE 5TH CIRCUIT WHETHER, LIKE I TOLD YOUR HONOR, WHETHER YOUR HONOR HAD EXCEEDED THE SUBJECT MATTER JURISDICTION BY ADJUDICATING MY RIGHTS IN A STATE COURT CASE WHEN YOUR HONOR LACKS IN PERSONAM JURISDICTION OVER MYSELF. BECAUSE I AM A DEFENDANT IN THAT CASE. TO BE HONEST WITH YOUR HONOR, IT'S VERY CONFUSING, IT'S UNCLEAR TO ME, IS YOUR HONOR STRIKING MY DEFENSES ALSO, HAS YOUR HONOR STRIKED MY DEFENSES IN THAT CASE? BECAUSE I DON'T UNDERSTAND, FROM READING, FROM PLAINLY READING OF THE ORDER, IT'S VERY AMBIGUOUS TO ME. DID YOUR HONOR

INTEND TO STRIKE MY DEFENSES, TO STRIKE ME PERIOD, EVEN THOUGH I AM A DEFENDANT IN THAT CASE? AM I PRECLUDED FOR LIFE? I DON'T UNDERSTAND.

I WAS SANCTIONED BECAUSE I DISMISSED MY [p. 43] ATTORNEY. ISN'T IT MY RIGHT TO DISMISS MY ATTORNEY WHEN HE SOLD ME DOWN THE RIVER, WHEN HE HAD EVIDENCE THAT WOULD PRECLUDE THE BANK FROM OBTAINING A JUDGMENT AND HE DECIDED NOT TO PRESENT IT, YOUR HONOR. YOU KNOW WHAT, YOUR HONOR SANCTIONED ME ON THE 2ND, YOUR HONOR SANCTIONED ME FOR DISMISSING MY ATTORNEY ACCORDING TO RULE 76 OF RULE OF CIVIL PROCEDURE, THAT'S WHAT YOUR HONOR SANCTIONED ME FOR. AND BECAUSE I MOVED FOR SEVERANCE OF MY OWN CAUSES OF ACTION, YOUR HONOR NEVER TOLD ME YOU CANNOT GO ON ON YOUR OWN CAUSES OF ACTION, YOUR HONOR TOLD ME THAT USURY THAT'S PART OF THE STATE. I DIDN'T MESS AROUND, I ABANDONED THAT. I FILED COMPLETE ABANDONMENT OVER THERE. I ABIDED BY THIS COURT'S ORDER THE BEST I COULD. AND I UNDERSTOOD.

THE COURT: NO, YOU HAVEN'T. YOU HAVE FILED THINGS, EVERY TIME I TURN AROUND YOU FILE SOMETHING. THEN YOU GO OFF AND GET YOUR FRIEND KAMINETSKY BACK THERE TO FILE THINGS. AND YOU ARE SAYING YOU ARE NOT A PARTY, BUT THEN YOU ARE A PARTY. AND, OF COURSE, WE LET YOU APPEAR HERE OUT OF COURTESY.

MS. LENTINO: I AM AN AGGRIEVED PERSON, YOUR HONOR, AN AGGRIEVED PERSON THAT THE PECUNIARY WAS AFFECTED. THERE IS AN EFFECT WHEN A PERSON THAT IS NOT A PARTY TO THE BANKRUPTCY PROCEEDING CAN INTERVENE.

THE COURT: YOU ARE A PARTY TO THIS PROCEEDING.

MS. LENTINO: I HAVE BEEN A PARTY BY BEING AN INTERVENOR, YES. BUT WHERE MY STANDING COMES FROM BEING AN

* * *

[p. 50] PROMISE YOUR HONOR I DIDN'T THINK IT WAS A PLEADING. HONESTLY, I TELL YOUR HONOR I DIDN'T THINK IT WAS A PLEADING.

THE COURT: AND WAS THERE SOME REASON THAT YOU COULDN'T FILE A MOTION IN THIS CASE FOR LEAVE TO FILE A NOTICE IN THE OTHER CASE?

MS. LENTINO: THAT DIDN'T OCCUR TO ME.

THE COURT: THAT DIDN'T OCCUR TO YOU.

MS. LENTINO: WHAT HAPPENED, YOUR HONOR, IS THINGS WERE HAPPENING TOO RAPIDLY IN THE STATE COURT AND I REALLY, I REALLY DIDN'T – HOW CAN I TELL YOU – I THOUGHT YOUR HONOR'S ORDER IS AMBIGUOUS TO ME.

THE COURT: MY ORDER IS AMBIGUOUS?

MS. LENTINO: I DO HAVE A SINCERE QUESTION, BECAUSE I DON'T KNOW IF YOUR HONOR IS

PRECLUDING ME FROM MY DEFENSES IN THAT CASE. I AM STILL A DEFENDANT.

THE COURT: I TOLD YOU NOT TO FILE ANYTHING WITH THAT COURT, DIDN'T IT?

MS. LENTINO: SO THAT WOULD HAVE INCLUDED JUDICIAL NOTICE?

THE COURT: DID I TELL YOU NOT TO DO ANYTHING WITH THAT COURT?

MS. LENTINO: WELL, I FILED A COUNTERCLAIM, YOUR HONOR.

THE COURT: PARDON?

MS. LENTINO: IT WAS DIFFERENT. WHEN YOUR HONOR

* * *

[p. 54] BY –

MS. MOBLEY: THE TYPICAL MANNER OF ADOPTING, YOUR HONOR.

THE COURT: I'M GOING TO LOOK AT THESE DOCUMENTS, BUT IT IS MANIFEST TO THE COURT THAT THE LENTINOES CANNOT ABIDE THE ORDER AND THEY HAVE DIRECTLY VIOLATED THE ORDER AND INTEND TO CONTINUE TO DIRECTLY VIOLATING MY ORDER, AND MS. LENTINO, JORGE LENTINO, AND EDUARDO LENTINO, I AM NOW TAKING YOU INTO CUSTODY FOR CONTEMPT OF COURT.

WE WILL RECONVENE AT FOUR O'CLOCK TO DISCUSS FURTHER SANCTIONS. THE MARSHAL IN THE BACK OF THE ROOM WILL TAKE YOU INTO

CUSTODY AND TAKE YOU TO THE 10TH FLOOR NOW.

IS THERE ANY QUESTIONS?

MS. LENTINO: I OBJECT TO THE RULING OF THE COURT, YOUR HONOR.

THE COURT: ALL RIGHT. MR. GOLDBERG, YOU ARE WELCOME TO COME BACK, I AM NOT SURE YOU ARE NECESSARY.

MS. LENTINO: IS THERE ANY POSSIBILITY, YOUR HONOR, THAT I SERVE THE TIME, WHATEVER TIME YOUR HONOR DECIDES I SHOULD SERVE, VERSUS MY HUSBAND. BECAUSE WE HAVE A SMALL DAUGHTER AND NOBODY TO TAKE CARE OF HER. AND DR. JORGE IS UNDER THE SAME SITUATION. WE HAVE GOT MINOR DAUGHTERS AT HOME AND –

THE COURT: YOU ARE NOW GOING INTO THE CUSTODY OF THE MARSHAL UNTIL FOUR O'CLOCK, AS AN INITIAL SANCTION ON YOUR [p. 55] CONTINUED VIOLATION OF THE LAW.

MARSHAL, I WANT THEM SEPARATED.

THE DEPUTY MARSHAL: EXCUSE ME?

THE COURT: I WANTED THEM SEPARATED, IT IT'S REASONABLY POSSIBLE.

THE DEPUTY MARSHAL: YES, YOUR HONOR.

THE COURT: IF IT'S NOT, LOCK THEM ALL UP TOGETHER.

FOUR O'CLOCK.

(RECESS HELD)

THE COURT: IN THE INTEREST OF SAVING THE TAXPAYERS MONEY, THE MARSHALS ARE GOING TO BRING YOUR PROPERTY UP SO THEY DON'T HAVE TO BE PAID OVERTIME.

MS. LENTINO, THE FACILITY WHERE YOU'VE JUST SPENT THE AFTERNOON IN IS NOT VERY PLEASANT, IS IT?

MS. LENTINO: NO, YOUR HONOR.

THE COURT: IT IS INFINITELY MORE PLEASANT THAN THE PLACE WHERE YOU WOULD GO IF I SERIOUSLY HOLD YOU IN CONTEMPT. YOU WOULD GO EITHER TO THE HARRIS COUNTY JAIL OR THE MONTGOMERY COUNTY JAIL. YOU WOULD BE HELD IN COMMON WITH LARGE GROUPS OR PEOPLE OF A CLASS YOU'RE NOT USED TO ASSOCIATING WITH. I CANNOT GIVE YOU UNDERSTANDING, BUT IF YOU WILL NOT QUIT MESSING IN THE LITIGATION AND THE PROGRESS OF THIS BANKRUPTCY, I WILL ISOLATE YOU FROM IT. I'LL PUT YOU VERY CLOSE TO THE STATE COURT LITIGATION, YOU'LL ONLY BE TWO BLOCKS AWAY, BUT YOU WILL BE WHERE YOU CANNOT INTERFERE WITH

* * *

APPENDIX 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	* CIVIL NO. 97-498
JORGE A. LENTINO, DB	* Houston, Texas * January 20, 1998 * 1:30 p.m. * (Filed Jan. 30, 1998)

HEARING
BEFORE THE HONORABLE LYNN N. HUGHES
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Jorge A. Lentino:	Jorge A. Lentino, Pro se
For Eduardo P. Lentino:	Eduardo P. Lentino, Pro se
For Marta Lentino:	Marta Lentino, Pro Se
For Pro Care of Houston LLC, et al.:	Edgar Ahron Goldberg
For National Loan Investors, LP:	James Louis Hordern, Jr.
For Marta Lentino:	Marta Lentino, Pro se
For the Trustee:	Theresa D. Mobley Neal D. Cannon, Jr. Scott Rothenberg
Court Reporter:	Ed Reed

Proceedings recorded by computer stenography
Produced by computer-aided transcription

* * *

[p. 15] my husband will sign that the world is a square.

But what has happened in the past, and Your Honor needs to understand this, is that attorneys have made by husband sign affidavits or –

THE COURT: One of the real tragedies of American life is the exploitation of physicians. They are just put upon by everybody. You know, illiterate Hispanic housewives and physicians, who own hospitals and live in houses of more than a million dollars of value, those are the tragic people in our society.

MRS. LENTINO: Your Honor, I don't know what is so tragic –

THE COURT: I just don't know how these people can stand to live with themselves.

MRS. LENTINO: I don't know what is so tragic about earning your living the old fashion way, by earning your money and living whatever your means lets you to live.

THE COURT: Or telling the truth.

MRS. LENTINO: We are telling the truth.

THE COURT: Then what is false?

MRS. LENTINO: You have to look at it in the whole context.

THE COURT: No, I'm going to look at individual facts. Is it not true that Cullen Bank sued him for $2,252,250 against him?

* * *

APPENDIX 10

Cause No. 9118878

CULLEN CENTER BANK & TRUST	*	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS 281ST JUDICIAL DISTRICT
vs.	*	
-LENTINO, EDUARDO P (MD)	*	

ORDER SETTING SCHEDULING CONFERENCE

To All Counsel and Pro Se Parties:

Pursuant to Rule 166, Texas Rules of Civil Procedure, you are ordered to appear at a Scheduling Conference in the **THE COURTROOM**
ON 07-31-1998 at 11:30 o'clock A.M.

Be prepared to discuss and set pretrial and trial dates.

If you do not appear, the court will sign an order of DISMISSAL FOR WANT OF PROSECUTION or other appropriate order.

If you have any questions regarding this notice, please contact the court **coordinator Rick Torres, at (713) 755-8268.**

Signed

JANE BLAND
JUDGE, 281ST DISTRICT COURT
Generated on: JUNE 17, 1998

MARTA A. LENTINO
709 KUHLMAN RD.
HOUSTON, TX 77024

PRO-SE

APPENDIX 11

28 U.S.C. § 1334. Bankruptcy cases and proceedings

* * *

(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for state law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. Any decision to abstain or not to abstain made under this subsection is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

* * *

(As amended Oct. 22, 1994, Pub.L. 103-394, Title I, § 104(b), 108 Stat. 4109.)

(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

* * *

---

28 U.S.C. § 1447. Procedure after removal generally

* * *

(c) A motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual

expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

* * *

(As amended Oct. 1, 1996, Pub.L. 104-219, § 1, 110 Stat. 3022.)

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.